

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD

BEFORE  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 709/Hyd/2020  
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Indian Rotocraft  
Limited,  
Hyderabad  
[PAN No. AACCI4741F]

Dy. Commissioner of  
Income Tax,  
Vs. Circle-2(1),  
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A. Srinivas, AR  
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 07/02/2024  
घोषणा की तारीख/Pronouncement on: 09/02/2024

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order dated 12/03/2018 passed by the learned Commissioner of Income Tax (Appeals)-2, Hyderabad ("Ld. CIT(A)"), in the case of M/s. Indian Rotocraft Limited ("the assessee") for the assessment year 2015-16, assessee preferred this appeal with a delay of 913 days.

2. Brief facts of the case are that assessee company, a joint venture between M/s. Tata Sons Ltd., and M/s. Agusta Westland Spa, has been incorporated to undertake final assembly, end user customization and delivery of Agusta Westland's AW 109 family helicopters. It filed its return of income, declaring loss of Rs. 2,82,69,596/- and claimed expenditure of Rs. 3,69,16,095/-. Learned Assessing Officer, however, disallowed the same on the grounds that the business operations of the assessee were not commenced and, therefore, the entire revenue expenditure needs to be disallowed.

3. In appeal, learned CIT(A) also categorically held that though the business of the assessee has been set up, but it did not commence its business activities and, therefore, the assessee is not entitled to claim the deduction of the expenditure. This is the only issue involved in this appeal.

4. In the affidavit filed to condone the delay, it is stated that as against the impugned order dated 23/03/2018, appeal had to be filed on or before 22/05/2018, but the assessee was having technical issues as to the operations and continuance of the entity itself, staff was reduced at the ground level with the directors stationed at Mumbai and the assessee came to know of the impugned order only when they were pursuing the non-issue of refund for the earlier years and pursuing the posting notice for the assessment year 2016-17 that the orders for the assessment year 2015-16 were passed by the learned CIT(A) and the refund due for the earlier years was adjusted against the demand for the assessment year 2015-16.

5. Learned AR submitted that the operations of the assessee have almost come to a closure and the staff were present only on limited scale and that is the reason why they could not effectively pursue the appeal diligently. He further submitted that for the assessment year 2014-15, on identical facts, the very same issue is decided by a Co-ordinate Bench of the Tribunal on merits, allowing relief to the assessee holding that all the expenses incurred in the interregnum period between setting up and commencement of business are permissible deductions. Basing on this, he submitted that when the assessee is having a very strong case in its favour, does not stand to gain by allowing the time to pass to its detriment unless under compelling circumstances.

6. Learned DR vehemently resisted the condonation of delay on the ground that the law does not help the people, who sleep over the proceedings and if this sort of delays are allowed it will impact the rights of the other party.

7. We have gone through the record in the light of the submissions made on either side. It is not in dispute that the assessee has setup the business. However, expenses were disallowed on the ground that business has not commenced. This issue has squarely been covered in assessee's own case for the assessment year 2014-15 in ITA No. 427/Hyd/2018 by order dated 22/03/2019 wherein reliance was placed on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Axis (P) Equity Limited (2017) 88 taxmann.com 488 and held that all the expenses incurred in the interregnum period between setting up and commencement of business are permissible deductions. The order for the assessment year 2014-15 has become final and no appeal is preferred against the same. When once

expenses were allowed for the assessment year 2014-15 on the ground that all the expenses incurred in the interregnum period between setting up and commencement of business are permissible deductions, there is no rationale to deny the same for the assessment year 2015-16.

8. With this view of the matter, we find that the assessee has a very strong case in its favour. Further, there is no reason for us not to believe the statement advanced on behalf of the assessee that under compelling circumstances, the assessee could not track the first appellate proceedings diligently, resulting in delay in preferring this appeal. The highest that would happen in this case is that a meritorious cause could be decided, without throwing it away at the threshold. We, accordingly condone the delay and allow the grounds raised.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 9<sup>th</sup> day of February, 2024.

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Hyderabad,  
Dated: 09/02/2024

TNMM

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. M/s. Indian Rotocraft Limited, 1<sup>st</sup> Floor, Block-E, Old Project Site Office,  
GMR Hyderabad International Airport, Shamshabad, Hyderabad.
2. Dy. Commissioner of Income Tax, Circle-2(1), Hyderabad.
3. Pr.CIT-2, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR  
ITAT, HYDERABAD